

1 James C. Sturdevant, SBN #94551
2 THE STURDEVANT LAW FIRM
3 A Professional Corporation
4 4040 Civic Center Drive, Suite 200
5 San Rafael, CA 94903
6 Telephone: (415) 477-2410
7 Facsimile: (415) 492-2810
8 Email: *gsturdevant@sturdevantlaw.com*

9 Arthur D. Levy, SB #95659
10 LAW OFFICE OF ARTHUR D. LEVY
11 1814 Franklin Street
12 Suite 1040
13 Oakland, CA 94612
14 Telephone: (415) 702-4551
15 Email: *arthur@yesquire.com*

16 *Additional Attorneys for Plaintiffs listed on Signature Page*

17 *Attorneys for Plaintiffs*

18 **UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 EDUARDO DE LA TORRE, et al.,

21 Case No. C 08-03174 TSH

22 Plaintiffs,

23 **JOINT STATUS CONFERENCE
STATEMENT**

24 v.

25 CASHCALL, INC.,

26 Defendant.

27 Date: December 20, 2018
28 Time: 10:00 a.m.
Courtroom: A – 15th Floor
Judge: Hon. Thomas S. Hixon

29

30

31

32

33

34

35

36

37

38

1 The parties submit this Case Management Conference Statement pursuant to the Standing
2 Order for All Judges of the Northern District of California dated November 1, 2018.

3 **1. Jurisdiction and Service**

4 a. Plaintiffs' Position:

5 Federal question jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 in
6 that one of the claims originally alleged herein arose under the laws of the United States. This
7 Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 to hear and determine
8 Plaintiffs' state law claims because those claims are related to Plaintiffs' federal claims and
9 arise out of a common nucleus of operative facts and form part of the same case or controversy
10 under Article III of the United States Constitution. In the more than ten years that this case has
11 been pending in this Court—which included orders by this Court on class certification and
12 summary judgment as well as an appeal to the Ninth Circuit Court of Appeals—no party and no
13 court has disputed jurisdiction. All parties have been served and have appeared.

14 b. CashCall's Position:

15 The so-called “Unconscionability Claim,” which asserts that the interest rates charged by
16 CashCall for its consumer loans were too high, is the only remaining claim in this case—the
17 Court declined to certify most of the claims asserted during this ten-year-old case, and the
18 remaining claims were dismissed or settled. The Unconscionability Claim is asserted on behalf
19 of a class of California consumers against a company that is incorporated in and located in
20 California, and the claim is based entirely on California law. Thus, there is no independent
21 basis for federal jurisdiction over the Unconscionability Claim. CashCall suggests that the issue
22 of subject matter jurisdiction be addressed at the Case Management Conference.

23 **2. Brief Statement of Principal Factual Issues**

24 a. Plaintiffs' Position:

25 Plaintiffs have brought their complaint against Defendant CashCall, Inc. (“CashCall”) to
26 challenge its policy and practice of making loans with unconscionable terms and conditions
27 which are beyond the ability of consumers’ financial ability to repay in the time and manner
28

1 provided for by CashCall. CashCall targets consumers in distress who have limited credit
2 alternatives and are financially unable to repay CashCall's loans under the terms of the loans.
3 Additionally, CashCall fails to adequately disclose the loans' risks and consequences, which are
4 not fully or realistically portrayed to borrowers. CashCall's high interest rates, oppressive loan
5 terms, and protracted repayment time make it impossible for most consumers to pay off their
6 loans within any reasonable time period or to pay their loans according to CashCall's schedule
7 without defaulting. CashCall's collection practices, part of its loan model, are also an
8 unconscionability factor.

9 CashCall's Position (below) artificially—and disingenuously—attempts to restrict
10 Plaintiff's Unconscionability Claim to an interest-rate challenge. This is refuted by the record
11 throughout the course of this litigation. Plaintiffs' unconscionability challenge is not simply to
12 CashCall's interest rates, but to the terms of CashCall's 96% and 135% \$2,600 loan products *in*
13 *their entirety and under the circumstances in which they were made*. The proper question for
14 resolution is whether CashCall's *loan product* of \$2,500 or more, at interest rates of 90% or
15 more, payable for three and one-half years, between June 30, 2004 and July 10, 2011 is
16 unconscionable.

17 Plaintiffs' operative Fourth Amended Complaint alleges that the entire loan product is
18 unconscionable. (Dkt. 54, ¶¶ 85-88.) Plaintiffs' briefing on summary judgment accordingly
19 framed the question as the unconscionability of the loan product, not merely the interest rate.
20 (Dkt. 193, pp. 8-18.) Judge James's Order denying summary judgment framed the issues in
21 keeping with Plaintiffs' motion, and the Court did not restrict its analysis to interest rates. (Dkt.
22 220, pp. 6-9; 30-35.)

23 Moreover, in its discussion below, CashCall mischaracterizes the Court's certification
24 Order. The Court, in fact, considered—and found to be common—the issue of whether CashCall
25 used procedures “to determine if Class Members who executed loan agreements qualified for
26 such loans . . . [T]he question of whether the lack of such procedure was unfair or unlawful is
27 common to all class members.” Dkt. #100, p. 13. Similarly, the issue of whether the uniform
28

1 terms of CashCall's loans "*including the length of repayment*, the interest only structure, and the
2 high interest rate" "violate some provision of law or are otherwise unenforceable . . . is an issue
3 that is common to all class members who executed a loan agreement." *Id.* (emphasis added).

4 Moreover, the Court agreed that Plaintiffs could demonstrate procedural
5 unconscionability by showing that CashCall's promissory notes are adhesion contracts offered
6 on a take-it-or-leave-it basis—a common issue that predominates over individual issues. *Id.*, p.
7 30. The Court noted that the Class Members stood in the same position in relation to CashCall
8 when applying for their loans and "were foreclosed from negotiating any of the terms of the
9 Promissory Notes." The Court at no point specified that the only one "of the *terms* of the
10 Promissory Notes" at issue in the unconscionability analysis was the interest-rate term. *Id.* at 30-
11 31. Although the Court noted that the issue of the interest rate of 90% or higher on these loans
12 was an issue that "could be determined on a class wide basis without raising individual issues"
13 (*id.* at 32), it did not indicate that that was the only issue to be considered in assessing
14 unconscionability.

15 Plaintiffs contest CashCall's current decertification arguments and are prepared to oppose
16 any decertification motion. The class certification Order does not frame the substantive issues
17 for trial. The triable issues are framed by the Operative Complaint and Judge James's initial
18 Order denying CashCall's summary judgment motion.

19 The Complaint also challenged CashCall's business practice of requiring borrowers to
20 agree to electronic fund transfers as a condition of receiving the loan as a violation of both the
21 Electronic Funds Transfer Act and the UCL. These claims were tried to the Court in 2016. The
22 Court issued an opinion in favor of Plaintiffs, and the parties subsequently settled these claims.
23 The settlement of these claims was approved by Judge James, and payments have been made to
24 Class Members as a result.

25 b. CashCall's Position:

26 The only factual issue that legitimately remains in this case relates to whether the interest
27 rates on CashCall's loans to the Unconscionability Class were too high. Plaintiffs allege that the
28

1 interest rates on those loans are unconscionable under the California Finance Code and therefore
2 unlawful under Business & Professions Code section 17200 (“UCL”). In certifying the
3 Unconscionability Class, Judge James noted that she was relying on Plaintiffs’ own narrow
4 characterization of the Unconscionability Claim as involving the interest rate alone: “Plaintiffs
5 argue that ‘[t]he unconscionability analysis will turn on the standard interest rate that CashCall
6 charged in each of its transactions with class members who purchased the \$2600 product and
7 were charged an interest rate of 90% or higher.’” *O’Donovan v. CashCall, Inc.*, 278 F.R.D. 479,
8 500 (N.D. Cal. 2011) (quoting Plaintiffs’ Class Certification motion at pp. 19-20 [Dkt. No. 60]).
9 Judge James also explained, based on Plaintiffs’ arguments in support of class certification, that
10 whether the interest rates on the loans were unconscionable could be determined simply by
11 reference to interest rates charged on other, similar loans and to CashCall’s justification for the
12 rates. *Id.* at 501-02.

13 Having obtained certification on this narrow theory, Plaintiffs then executed a bait-and-
14 switch, at every turn trying to reintroduce legal theories that the Court declined to certify
15 precisely because they raised numerous individual issues. Plaintiffs apparently intend to
16 continue with their bait-and-switch tactics, as reflected in their statement of issues described
17 above. For example, Plaintiffs assert that the remaining factual issues include (1) whether
18 consumers had the ability to repay the loans, (2) whether the loan terms were adequately
19 disclosed, (3) the impact of CashCall’s collection practices on Class members, and (4) other
20 supposedly objectionable loan terms—issues that Plaintiffs had previously disclaimed when
21 seeking class certification or which Judge James declined to certify after careful consideration.

22 As to ability to repay, Plaintiffs had, in fact, alleged a separate UCL claim based on a
23 theory that CashCall made loans without regard to the borrowers’ ability to repay, claiming that
24 this practice violated Financial Code section 22150 and 10 C.C.R. §1452. But the Court *denied*
25 certification of this claim, finding that individual issues predominated because evaluation of the
26 claim would require a “particularized examination of CashCall’s underwriting process vis-à-vis
27 individual borrowers to determine whether CashCall engaged in meaningful consideration of
28

1 their ability to repay the loans in the time and manner specified in the loan agreement.”

2 *O'Donovan*, 278 F.R.D. at 502. Now, Plaintiffs plan to try to reintroduce issues related to the
3 borrowers' ability to repay into the case.

4 As to disclosures, Plaintiffs expressly disclaimed in briefing on class certification for the
5 Unconscionability Claim any theory of surprise regarding the loan terms and instead asserted
6 that their procedural unconscionability argument would be based solely on the fact that the loans
7 were contracts of adhesion. *Id.* at 500. That position was central to the Court's finding that
8 common issues predominated with respect to procedural unconscionability. CashCall had argued
9 in opposition to class certification that an evaluation of disclosures provided to Class members
10 would raise individual issues. The Court considered those arguments irrelevant based on
11 Plaintiffs' disclaimer of any claim of surprise: “However, as Plaintiffs point out, they do not
12 base their procedural unconscionability claim on a surprise theory. Thus, the Court agrees with
13 Plaintiffs that CashCall's arguments are inapposite.” *Id.* Now, Plaintiffs plan to try to
14 reintroduce the adequacy of CashCall's disclosures into the case.

15 As to collection practices, Plaintiffs originally alleged a claim for violation of the
16 California Rosenthal Fair Debt Collection Practices Act (and a derivative UCL claim) that
17 challenged several aspects of CashCall 's collection practices, including (1) sending allegedly
18 misleading collection communications, (2) using automated collection calls to coerce consumers
19 to make payments on delinquent loans, and (3) taking unauthorized electronic payments from
20 consumers' accounts. The Court “carefully considered” Plaintiffs arguments on each of these
21 discrete theories and refused to certify any of the claims. *Id.* Undaunted by the Court's denial of
22 certification of these claims, Plaintiffs argued in opposition to CashCall's ensuing summary
23 judgment motion that the loans “harmed the Class because CashCall's collection practices are
24 stressful and may cause harm to the borrowers' credit rating.” *De la Torre v. CashCall, Inc.*, 56
25 F. Supp. 3d 1073, 1103 n.17 (N.D. Cal. 2014). The Court rejected these arguments, finding that
26 they raised individual issues, not triable issues of fact: “The Court agrees that these issues, unlike
27 analysis of the Class data regarding repayment, would require individual inquiry and do not raise
28

1 a triable issue of fact with regard to harm based on the loan terms themselves.” *Id.* Now,
2 Plaintiffs plan to try to reintroduce issues related to CashCall’s collection practices into the case.

3 And as to loan terms other than the interest rates, Plaintiffs sought to certify a broader
4 unfairness claim under the UCL, challenging loan terms other than the interest rate. Plaintiffs
5 argued that “CashCall’s business practices in offering loans with grossly one-sided terms
6 (including the charging of excessively high interest rates, requiring payment of 4-6 times the
7 original loan amounts, the extended loan maturities, charging of unfair and excessive fees
8 designed to extend the length of repay) are unfair.” *O’Donovan*, 278 F.R.D. at 502-03 (quoting
9 Plaintiffs’ Motion at 22-23 [Dkt. No. 60]). The Court found that this claim was “inappropriate
10 for class treatment” because “the circumstances surrounding each loan agreement, including each
11 borrower’s financial circumstances, would come into play, requiring individualized
12 examinations.” *Id.* at 503. Now, Plaintiffs plan to try to reintroduce issues related to loan terms
13 other than the interest rate into the case.

14 The Court cannot ignore these prior rulings, and Plaintiffs may not reintroduce legal
15 theories and issues that they previously disclaimed in order to obtain class certification or which
16 Judge James declined to certify. Thus, the only legitimate factual issue remaining in this case
17 pertains to the interest rates charged for the loans.

18 And as to that, it has become clear that determining whether those interest rates were
19 unconscionable cannot be accomplished on the narrow basis through which Plaintiffs obtained
20 class certification. As addressed in more detail below in CashCall’s discussion of its anticipated
21 motion to decertify the Unconscionability Class, in addition to these issues, Plaintiffs also raised
22 other issues in opposition to CashCall’s previous motion for summary judgment on the
23 Unconscionability Claim that also are inherently individualized, thus making this claim
24 inappropriate for class-wide litigation. And more recently, the California Supreme Court
25 explained, when answering a question posed to it by the Ninth Circuit relating to Plaintiffs’
26 appeal from the summary judgment order, that determining whether interest rates on consumer
27 loans are unconscionable requires a full examination of the context of the loans—an examination
28

1 that presupposes individualized issues. *See De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966, 985-
2 86 (2018).

3 CashCall had determined ever since the Court initially denied its summary judgment
4 motion on disputed-fact grounds that a motion to decertify the Unconscionability Class would be
5 appropriate. And that is all the more true in light of what the California Supreme Court has held
6 to be relevant to an unconscionability analysis of interest rates.

7 **3. Procedural History and Remaining Principal Legal Issues**

8 c. **Plaintiffs' Position:**

9 CashCall previously moved for summary judgment on Plaintiffs' Unconscionability UCL
10 claim. After extensive briefing and oral argument, the District Court denied the motion, holding
11 that CashCall was not entitled to summary judgment on the issue of whether its loans were
12 unconscionable. Subsequently, the District Court both granted CashCall's motion for
13 reconsideration and granted summary judgment for CashCall, finding that it lacked the judicial
14 authority to find that CashCall's interest rates were unconscionable. Plaintiffs appealed to the
15 U.S. Court of Appeals for the Ninth Circuit, seeking reversal of the District Court's ruling.
16 CashCall cross-appealed, asking the Ninth Circuit to reverse the District Court's order on class
17 certification if Plaintiffs succeed in their appeal on the merits.

18 After briefing and oral argument, the Ninth Circuit requested a decision from the
19 California Supreme Court on the question of whether the interest rate on consumer loans of
20 \$2,500 or more governed by California Financial Code § 22303 render the loans unconscionable
21 under California Financial Code § 22302. The California Supreme Court issued a unanimous
22 opinion finding that the interest rate on consumer loans of \$2,500 or more may render the loans
23 unconscionable under § 22302 of the Financial Code. *De La Torre v. CashCall, Inc.*, 5 Cal. 5th
24 966 (2018).

25 Following the opinion of the California Supreme Court, the Ninth Circuit vacated the
26 judgment of the District Court and "remanded to that court for further proceedings consistent
27 with that opinion." 904 F.3d 866 (9th Cir. 2018). The effect of the appeal is to return the case
28

1 to this Court in the same posture as when the appeal was taken except that the second summary
2 judgment Order has been reversed.

3 The principal legal issues that remain to be decided include the following:

4 a. Whether CashCall's uniform lending and collection practices are unlawful
5 business practices in violation of the Unfair Competition Law, California Business and
6 Professions Code § 17200 *et seq.* ("UCL") and the California Financing Law, California
7 Financial Code § 22000 *et seq.*

8 b. The appropriate determination of restitution, injunctive relief, or other
9 remedy arising out of a liability finding in Plaintiffs' favor.

10 d. CashCall's Position:

11 As described in CashCall's previous section, CashCall contends that the only remaining
12 legal issue is whether the interest rates on the loans at issue were unconscionably high.

13 **4. Motions**

14 Pending Motions: None.

15 Anticipated Motions: Plaintiffs do not anticipate filing any motions prior to pre-trial
16 motions in limine.

17 CashCall anticipates filing two motions. First, CashCall intends to move for
18 decertification of the Unconscionability Class. Federal Rule of Civil Procedure 23(c)(1)(C)
19 provides that "[a]n order that grants or denies class certification may be altered or amended
20 before final judgment." Thus, a court's class certification order is "inherently tentative." *Marlo v.*
21 *United Parcel Serv., Inc.*, 251 F.R.D. 476, 479 (C.D. Cal. 2008), *aff'd*, 639 F.3d 942 (9th Cir.
22 2011) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 n.11 (1978)). The Court
23 retains a *continuing duty* to ensure compliance with class action requirements, and it may
24 decertify a class at any time. *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982).
25 Indeed, Rule 23 vests district courts with "broad discretion" not only to determine whether a
26 class should be certified, but also "to revisit that certification throughout the legal proceedings
27 before the court." *Armstrong v. Davis*, 275 F.3d 849, 872 n.28 (9th Cir. 2001), *cert. denied*, 537
28

1 U.S. 812 (2002); *see also United Steel, Paper & Forestry etc. v. ConocoPhillips Co.*, 593 F.3d
2 802, 809 (9th Cir. 2010) (“[A] district court retains the flexibility to address problems with a
3 certified class as they arise, including the ability to decertify.”). “[A] district court
4 reevaluating the basis for certification . . . may ‘consider the nature and range of proof necessary
5 to establish the [class-wide] allegations.’” *Marlo*, 251 F.R.D. at 479-80 (quoting *O’Connor v.*
6 *Boeing N. Am., Inc.*, 197 F.R.D. 404, 410 (C.D. Cal. 2000)).

7 Had the Court not granted reconsideration and entered summary judgment in CashCall’s
8 favor, CashCall would have moved to decertify the Unconscionability Class, as CashCall told the
9 Ninth Circuit in its reply brief on its cross-appeal of the certification order. (See 9th Cir. Dkt. 44,
10 at pp. 2-3.) The arguments and rulings on summary judgment demonstrated why class
11 certification was improper. For example, Plaintiffs’ experts opined about the financial illiteracy
12 of consumers generally and their inability to understand the loan process and loan disclosures—
13 *see* 56 F. Supp. 3d at 1096—notwithstanding their argument on class certification that their
14 procedural unconscionability argument rested solely on the fact that the loans were contracts of
15 adhesion. The Court also found that there was conflicting evidence regarding whether class
16 members had choices other than the CashCall loans, and whether CashCall loans were
17 comparable to other loan products—inherently individual factual issues that would depend on the
18 circumstances of each borrower. *Id.* at 1100, 1101. In addition, the Court found that there were
19 triable issues of fact as to whether the loans had value: “Although there was evidence that the
20 loans provided some value to borrowers by providing access to unsecured credit despite low
21 credit scores, there was also evidence of harm due to the high cost of the loan.” *Id.* at 1103. This
22 purported triable issue of fact is actually an inherently individual issue.

23 The California Supreme Court went even further, explaining that “[a]n evaluation of
24 unconscionability is highly dependent on context . . . The ultimate issue in every case is whether
25 the terms of the contract are sufficiently unfair, *in view of all relevant circumstances*, that a court
26 should withhold enforcement.” *De La Torre*, 5 Cal. 5th at 976 (quoting *Sanchez v. Valencia*
27 *Holding Co.*, 61 Cal. 4th 899, 911-12 (2015) and adding emphasis). The court also noted that
28

1 “[w]hether the price of a bargain is ‘unreasonably and unexpectedly harsh’ depends on more than
2 just a single printed number, so we examine not only the price term itself but other provisions
3 and circumstances affecting a transaction’s benefits and burdens.” *Id.* at 975; *see also id.* at 982
4 (“Nonetheless, at least one thing about the doctrine is clear: it requires more than just looking at
5 one particular price term in a contract, comparing it to a fixed benchmark, and declaring the term
6 unconscionable.”); *id.* at 983 (court must consider, *inter alia*, “whether there was … undue
7 oppression arising from ‘an inequality of bargaining power,’ including the various factors
8 tending to show relative bargaining power such as the parties’ sophistication, their cognitive
9 limitations, and the availability of alternatives”) (quoting *A&M Produce Co. v. FMC Corp.*, 135
10 Cal. App. 3d 473, 486 (1982)). All of these factors that are necessary for a determination of
11 unconscionability implicate substantial individual issues. And when seeking class certification,
12 Plaintiffs argued that most, if not all, of those factors would not need to be litigated on a class-
13 wide basis—an argument that Judge James accepted at the time but is now clearly erroneous.

14 Second, CashCall intends to file *Daubert* motions challenging the admissibility of
15 opinions by Plaintiffs’ four designated experts in the case. Much of their testimony is highly
16 speculative and not based on solid foundations. CashCall intends to file these motions well in
17 advance of trial, albeit after its motion to decertify the class, to narrow the scope of the issues
18 and testimony that would need to be presented at trial.¹

19 **5. Amendment of Pleadings**

20 Plaintiffs do not anticipate amendments to their operative Fourth Amended Complaint at
21 this time, but reserve their right to do so pursuant to leave of Court, including based on the
22 further discovery mentioned below and investigation.

23 **6. Evidence Preservation**

24 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically
25 Stored Information (“ESI Guidelines”) and taken steps to preserve any records—hard copy and

26
27 ¹ Although it could be argued that a second motion for summary judgment would be appropriate
28 in light of the California Supreme Court’s opinion, CashCall does not intend to file a summary
judgment motion.

electronic—that they have regarding the matters concerning this litigation.

7. Disclosures

The parties previously made Rule 26(a) disclosures.

8. Discovery

5 Plaintiffs' Position: the Parties have propounded and responded to Requests for
6 Production of Documents and other written discovery. The Parties have completed the
7 depositions of fact witnesses and expert witnesses. Experts for both sides have submitted expert
8 reports and been deposed. Plaintiffs intend to request that Defendant update certain discovery
9 responses to bring them current (to the extent it has not already done so). Plaintiffs also intend to
10 engage in limited discovery regarding the solvency of CashCall and its ability to pay a
11 substantial judgment. Plaintiffs are prompted to do so because, during the pendency of the
12 appeal and certification to the California Supreme Court, CashCall announced that it was
13 discontinuing all unsecured consumer lending, including the products that are at issue in this
14 case. Depending on the outcome of that discovery, Plaintiffs may need to take follow-up steps to
15 protect the class recovery.

16 CashCall's Position: CashCall does not believe any additional discovery is appropriate or
17 necessary. Fact and expert discovery closed prior to the filing of the first summary judgment
18 motion.

9. Class Actions

20 Plaintiffs brought this action as a class action. By Order of November 14, 2011, the
21 District Court, the Hon. Maria-Elena James presiding, certified the Loan Unconscionability
22 Claims, defining the Class, after a later amendment to the definition, as follows: "All individuals
23 who, while residing in California, borrowed from \$2,500 to \$2,600 at an interest rate of 90% or
24 higher from CashCall, Inc., for personal, family, or household use at any time from June 30,
25 2004 to July 10, 2011."

10. Related Cases

The Parties do not believe there are related cases.

1 **11. Relief**

2 Plaintiffs seek restitutionary relief, according to proof; injunctive relief; and an award of
3 attorneys' fees and costs.

4 **12. Settlement and ADR**

5 The parties previously participated in an unsuccessful settlement conference with Hon.
6 Joseph Spero on the Conditioning Claim. The parties also participated in multiple settlement
7 conferences with Hon. Laurel Beeler, which ultimately resulted in the settlement of Plaintiffs'
8 Conditioning Claims under the Electronic Funds Transfer Act.

9 Plaintiffs' Position: Plaintiffs are open to conducting a further Settlement Conference
10 with Judge Beeler.

11 CashCall's Position: CashCall does not believe settlement discussions would be
12 productive.

13 **13. Consent to Magistrate Judge for all Purposes**

14 In accordance with N.D. Local Rule 72-1, the parties previously consented to have a
15 Magistrate Judge preside over all proceedings in this case and previously filed the necessary
16 documents with the Court.

17 **14. Other References**

18 The Parties do not believe this action is suitable for reference to binding arbitration, a
19 special master, or the Judicial Panel on Multidistrict Litigation.

20 **15. Narrowing of Issues**

21 The Parties do not currently propose ways in which the issues remaining to be tried may
22 be narrowed by agreement or motion. The Parties do not currently have suggestions to expedite
23 the presentation of evidence at trial.

24 CashCall contends that the remaining issues in this case as confined by the order granting
25 class certification are already narrow. CashCall opposes any broadening of the issues to include
26 those which Plaintiffs disclaimed when seeking class certification or that were already found by
27 Judge James not to be appropriate for class certification. CashCall's planned motions for
28

1 decertification and challenges to Plaintiffs' expert witnesses will further narrow the issues.

2 Plaintiffs contend that CashCall mischaracterizes the Court's class certification Order and
3 adopts an overly narrow view of it. At no point did the Court indicate that the unconscionability
4 analysis was limited to the interest rate alone. *See* Section 2(a) (Plaintiffs' Position), above.

5 **16. Expedited Trial Procedure**

6 Except as otherwise set forth herein, the parties do not believe that this case can be
7 handled on an expedited basis with streamlined procedures.

8 **17. Scheduling**

9 Plaintiffs propose the following schedule:

10 **Discovery Cut Off:** May 1, 2019 (75 days before trial date)

11 **Pre-trial filings:** May 31, 2019 (45 days before trial date) , 2019

12 **Final Pretrial Conference:** June 17, 2019 (30 days before trial date)

13 **Trial:** July 15, 2019

14 **CashCall's Position:** Due to the trial schedules of CashCall's trial counsel (Brad Seiling
15 and Donald Brown), CashCall proposes trial in October, with normal pretrial deadlines. Fact and
16 expert discovery closed, and the discovery cut-off in the case is long past.

17 **18. Trial**

18 The Parties agree that the trial will be a Court trial. The Parties estimate that the trial can
19 be conducted in 8 to 10 trial days.

20 Plaintiffs' Position: As discussed above, Plaintiffs disagree with CashCall's position that
21 they are seeking to "expand the scope of the issues"; they are instead seeking to demonstrate the
22 common issues as described in the Court's class certification Order. They believe the trial can
23 be conducted in 8 to 10 trial days.

24 **CashCall's Position:** In the event the Court denies CashCall's motion for decertification
25 of the class, CashCall believes that the trial could be conducted in 4-5 days if the issues are
26 confined to those as to which the Court granted class certification. If Plaintiffs are permitted to
27 expand the scope of the issues, then the trial would likely require 8-10 days.

19. Disclosure of Non-Party Interested Entities or Persons

Plaintiffs and Defendants are unaware of any persons, associations of persons, firms, partnerships, corporations, or entities other than the parties themselves to have a financial or any other kind of interest in the subject matter in controversy or in a party to the proceeding.

20. Professional Conduct

Attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other Matters that may facilitate the efficient disposition of this matter

9 Except as otherwise set forth above, the Parties have no further suggestions or requests at
0 this time.

Respectfully submitted,

DATED: December 13, 2018

/s/ Steven M. Tindall

Steven M. Tindall

Steven M. Tindall
Andre M. Mura
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, CA 94612
Telephone: (510) 350-9700

Jessica Riggan
RUKIN HYLAND RIGGIN LLP
1939 Harrison Street, Suite 290
Oakland, CA 94612
Telephone: (415) 421-1800

James C. Sturdevant
THE STURDEVANT LAW FIRM
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
Telephone: (415) 477-2410

Arthur D. Levy
LAW OFFICE OF ARTHUR D. LEVY
1814 Franklin Street
Suite 1040
Oakland, CA 94612
Telephone: (415) 702-4551

1 Damon Connolly
2 Damon Connolly Law Offices
3 1000 4th St #600
4 San Rafael, CA 94901
Telephone: (415) 256-1200

5 Attorneys for Plaintiffs
6 EDUARDO DE LA TORRE et al.

7 Dated: December 13, 2018

8 _____ /s/ Brad W. Seiling _____
9 Brad W. Seiling

10 Brad W. Seiling
11 Donald R. Brown
12 MANATT, PHELPS & PHILLIPS LLP
13 11355 West Olympic Blvd.
14 Los Angeles, CA 90064
15 Telephone: (310) 312-4000

16 Attorneys for Defendant CashCall, Inc.

LOCAL RULE 5-1 ATTESTATION

I, Steven Tindall, am the ECF user whose ID and password are being used to file this Joint Status Conference Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest that Donald Brown has concurred in the filing of this document with his electronic signature.

DATED: December 13, 2018

_____ /s/ Steven M. Tindall _____
Steven M. Tindall